



FAIRFAX COUNTY

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JAN 26 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 25, 1993

Office of the Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Dear Sirs:

The enclosed is submitted pursuant to the Federal Communications Commission's request for comments in the matter of Notice of Proposed Rulemaking, MM Docket No. 92-263 pertaining to Consumer Protection and Customer Service issues. The original and nine copies are enclosed.

Please do not hesitate to contact me at the above address and telephone number if additional information is needed to properly evaluate the enclosed comments.

Sincerely,

Ronald B. Mallard

Ronald B. Mallard
Cable Television
Administrator/Director

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of)
)
Implementation of the Cable Television) MM Docket No. 92-263
Consumer Protection and Competition)
Act of 1992)
)
Consumer Protection and Customer Service)

REPLY COMMENTS OF FAIRFAX COUNTY, VIRGINIA

Ronald B. Mallard
Cable Television
Administrator/Director
Fairfax County Department
of Consumer Affairs
12000 Government Center
Parkway, Suite #433
Fairfax, Virginia 22035

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I. INTRODUCTION

On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act" or "Act") was enacted by the United States Congress. In passing the 1992 Cable Act, Congress directed the Federal Communications Commission ("FCC" or "Commission") to establish rules and regulations to implement the Act's provisions. In its Notice of Proposed Rule Making ("NPRM") released on December 11, 1992, the FCC seeks comment on the adoption of implementation regulations relating to national cable television ("CATV") customer service standards.

The 1992 Cable Act allows local government authorities to adopt and enforce Federal customer service standards. The Act further states that local authorities can adopt standards different or more stringent than those provided for in the Act either unilaterally or by mutual agreement with the cable companies operating in their franchise areas. Fairfax County, Virginia ("County") currently has significant customer service standards, but many of them are over 10 years old and do not cover all facets of cable system operations. For example, the County has several standards related to the prompt repair of outages and reception problems and the issuance of credits for such problems. During 1992, 14 percent (i.e., 37) of the cable complaints filed with the County were related to these subjects. Many of these complainants were not satisfied with the company's response, even when the County's review indicated that the company had complied with local franchise standards. This indicates a need for more stringent and additional standards in this area, such as the ones recommended in the Discussion section of this document.

As an additional example, 15 percent (i.e., 41) of all cable complaints filed with the County in 1992 were related to service installation. Many of these complainants were

dissatisfied with the number of service requests or appointments that were required to complete their installations. The County currently has no standard relating to credits for missed appointments when repeat occurrences are experienced. Such a standard is recommended in the Discussion section.

Since the County's current standards are not sufficient to successfully resolve a significant number of cable complaints and the cable companies will not always voluntarily resolve complaints not addressed by local franchise standards, it is clear that cable television subscribers in the County could be directly, immediately and positively affected by the national customer service regulations adopted by the FCC. If such standards were more comprehensive and more stringent than those included in current franchise agreements, they would quickly benefit all cable subscribers and provide uniform responsiveness throughout the cable industry. Additionally, with these types of standards as a basic framework, Fairfax County can then develop and target specific standards that will best address the problems unique to its citizens.

By way of background, two cable television systems currently are franchised to serve the residents of the three franchise areas in Fairfax County. The two largest franchise areas, encompassing approximately 300,000 homes, are served by Media General Cable of Fairfax, Inc. ("Media General" or "MGC"). MGC's subscriber system currently comprises over 3,850 plant-miles with over 200,000 subscribers (including those in the separately franchised cities and towns). It is a dual cable, 450 MHz system with an 126 channel capacity. Over 90 of these channels are currently active.

The smaller, separate Reston franchise area of the County is served by Time Warner Cable of Reston ("Time Warner"). Time Warner's subscriber system encompasses over 150 plant-miles of dual, 330 MHz cable. It passes nearly 20,000 homes, including more than 12,400 subscribers and offers an 80 channel capacity. Over 60 of these channels are currently active.

II. DISCUSSION

The discussion and comments which follow include responses to the FCC's request for comments for those

paragraphs in the NPRM that most significantly and directly affect the citizens of Fairfax County. The County has reviewed the Comments of other filers in this proceeding and finds support for its views. Specifically, the Comments of the National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors and the National Association of Counties ("NATOA, et al.")^{1/} provide significant support for the County's positions on among others, the self-executing nature of Federal standards, the primary enforcement role of local governments, the unilateral right of franchising authorities to establish more stringent standards and the inadequate nature of the National Cable Television Association, Inc.'s ("NCTA") standards if used as a benchmark. In contrast, the County opposes the views of the NCTA^{2/} on the same issues listed above as expressed in its comments. To the extent the County's comments agree with NATOA, et al.'s filing, we agree

1. Comments of the National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors and the National Association of Counties, in Notice of Proposed Rule Making, MM Docket #92-263, filed January 11, 1993.

2. Comments of the National Cable Television Association, in Notice of Proposed Rule Making, MM Docket #92-263, filed January 11, 1993.

with their positions. To the extent our comments disagree with the NCTA's filing, we disagree with its positions.

County comments are divided into the two broad areas discussed in the NPRM. Each section of this discussion is referenced by the paragraph or footnote to which it relates in the NPRM.

A. The Customer Service Standard Enforcement Process

1. Paragraph 4 - The Self-Executing Nature of Federal Standards.

The FCC seeks comments on whether the Commission's standards are self-executing or if local franchising authorities must take some action in order to impose these standards on the cable companies operating in their franchise areas.

The County believes that the FCC customer service standards must be self-executing in order to achieve the intent of the 1992 Cable Act in providing for these standards. As indicated in the NPRM, the Federal standards are to be considered the minimum level of standards to be in effect in any jurisdiction. If these standards are not self-executing,

and a local jurisdiction does not move to adopt the Federal standards or its own local standards (e.g., the local government does not have an active monitoring program or specific regulatory agency), then subscribers would be unprotected from inadequate customer service. If Federal standards are self-executing, then cable operators automatically know the minimum level of customer service expected, subscribers are automatically protected and a local jurisdiction can concentrate on adding to these provisions with standards specific to that jurisdiction, if necessary and desirable. It is for this reason that it is in the best interest of cable operators and consumers alike to establish in this proceeding that the Federal standards are self-executing.

2. Footnote No.9 - Waiver of Customer Service Standards.

The Commission seeks comments on whether the Act permits the Commission to grant waivers of the Federal customer service standards and, if so, how such waivers would be justified and allowed.

The County believes that the Federal standards, since they will be the minimum standards in any jurisdiction, will be

reasonable and achievable by all cable systems nationwide. However, in exceptional circumstances, certain standards may not be achievable by a cable operator and a waiver may be necessary. The County recommends that the FCC consider waiver requests on a case-by-case basis, only after review and approval by the franchising authority overseeing the cable company that is making such a waiver request. The existing waiver process that applies generally to all FCC rules is sufficient and should be relevant to these proceedings.

3. Paragraphs 6 & 7 - Imposition of Customer Service Standards and the Continuing Federal Role.

The FCC seeks comments on when, pursuant to the Act, a local franchising authority may impose new customer service standards on the cable operators providing service in their franchise areas.

The County believes that it is manifestly clear that the provisions of the 1992 Cable Act allow franchising authorities to now impose customer service standards at any time during the franchise period. The County believes it was Congress' intent for the 1992 Cable Act to strengthen the provisions of the 1984 Cable Act so that local governments could impose standards unilaterally to correct customer service problems

without having to wait for franchise renewal periods. In imposing such standards, franchising authorities would be required to enact laws or regulations. Typically, this means that such standards will be subject to a process that allows public participation and public consideration of all input and research presented by any parties that wish to participate in the public forum, including cable operators. Therefore, only equitable amendments to local ordinances for franchise customer service provisions would likely be achieved.

Additionally, the Commission should have a continuing role regarding review of customer service obligations, especially for local authorities that are unable to do so. All cable operators should be required to submit an annual report to the Commission summarizing their compliance with the Federal customer service standards for the preceding year. Beyond this, the Commission can assume an enforcement role that is reactive in nature. Essentially, the Commission need only investigate a cable operator's noncompliance with Federal customer service standards when requested to do so by the local franchising authority.

B. Alternative Approaches For Federal Customer Service Standards.

1. Paragraph 10 - Federal Customer Service Standard Benchmark and Local Oversight.

The FCC seeks comments on whether a benchmark set of customer service standards, specifically the National Cable Television Association's customer service standards, should be adopted in this proceeding.

In this proceeding, the Commission is establishing, as a minimum, customer service standards governing office hours, telephone availability, installations, outages, service calls and communications between the cable operator and subscribers, including billing communications and refunds.

The customer service standards recommended by the NCTA only adequately address some of these items. Consequently, more stringent standards, as well as additional standards, are needed in many cases, in order to satisfy Congress' directive that the FCC establish effective minimum customer service requirements.

Instead of adopting the NCTA's standards as a national benchmark, the County generally endorses the standards proposed by NATOA, et al.^{3/} and specifically recommends adoption

^{3/} See Generally, Comments of NATOA, et al. at Attachment B.

of the following as a minimum benchmark for FCC standards:

a. Cable System Office Hours and Telephone Availability Standards

Office Hours - Offices must be open and staffed a minimum of 50 hours per week, with at least 9 hours per weekday and 5 hours per Saturday.

Telephone Availability - A local number or toll-free lines to be answered 24 hours per day either by staff or, after-hours only, by an answering service. Emergency referral information must be operational 24 hours per day.

b. Installation, Outage and Service Call Standards

Installation - Standard installation must be performed within 10 business days after the order is placed. Appointments must be made either at a specific time or within a 4-hour time block.

Outage and Reception Problems - Outages must be responded to and corrected promptly, and in no event

later than 12 hours after the company is notified.

Upon subscriber request, the company must give a 24-hour credit for every outage lasting more than 4 hours in any 24 hour period or calendar day.

Subscribers with reception problems remaining unrepaired 48 hours after the problem is reported are entitled to one day's credit for each 24 hour period in which the problem persists for at least 4 hours.

Service Calls - Service requests must be acknowledged within 24 hours; off-premises repairs must be completed within 24 hours; all others within 48 hours. No charge is allowed if the system is at fault.

Service appointments must be made either at a specific time or within a 4-hour time block, with adequate appointment time available during evenings and weekends. The company may not cancel any appointment less than 24 hours before the appointment time.

For a failure to meet a service appointment within the specified parameters on two or more occasions,

the company must, at the customer's discretion, give credit for one month's free service.

The company must maintain a maintenance service capable of locating and repairing malfunctions 24 hours per day.

c. Subscriber Communication (Including Bill and Refund) Standards

Billing/Refunds - Bills must be monthly and fully itemized. Bills must clearly delineate all activity during billing cycles, including optional charges, rebates and credits. Bills must include the franchising authority's telephone number. The company must review billing disputes within 20 days.

Information - The company must provide each subscriber with written information concerning rates and programming. This information must be given to new subscribers upon installation, at least annually to all subscribers and upon request. Written notice of all service terms and policies, including billing and complaint procedures, must also be provided to new subscribers upon installation, at least annually to all subscribers, and upon request.

All promotional materials must clearly disclose rates, terms and conditions of the promotion. The company must retain copies for at least one year, and furnish copies to the local franchising authority upon request.

d. Additional Standards

Complaint Handling - The company must semiannually provide notification to all customers that they may refer unresolved disputes to the local franchising authority. All complaints should be resolved as soon as possible, but a resolution determination must be made no later than 10 business days after the complaint is received. Acknowledgment of receipt of the written complaint must be made within 5 business days.

Employee Identification - Cable company employees, contractors and vehicles must have proper and easily visible identification when engaged in service, installation and construction activities.

The County also recommends that the local franchising authority be given primary responsibility for monitoring cable operators' compliance with customer service standards. Local authorities can do specific audits and require targeted statistical reports from cable systems to assist in their monitoring. As stated previously, the FCC should require general annual reports of a cable company's compliance with consumer service standards and investigate noncompliance with Federal standards upon request by the local franchising authority.

2. Paragraph 14 - Penalties for Violations of Customer Service Standards.

The FCC seeks comments on whether there are incentives or penalties that can be included in these standards that will motivate system operators to function efficiently and respond promptly.

The County believes that motivation for compliance with customer service standards can best be achieved through penalties for violations of standards. Such penalties can include automatic rebates, credits on bills, free installation, and preference in scheduling of future appointments. Many of these types of incentives are already

included in existing franchise and customer service agreements and could be applied by the local franchising authority, or at a national level by the FCC. However, the County believes that the determination of any noncompliance with Federal standards should, in all cases, rest with the franchising authority and not with the cable operator. For example, some existing customer service regulations contained in current cable franchises allow the operator to determine noncompliance with customer service standards. The County believes that this is not an effective process, especially in difficult or unclear cases, because the tendency will be for the operator to act in its own best interest. Additionally, violations of customer service standards should be punishable at any time during the franchise and not just at franchise renewal or only by denial of the franchise, since these latter alternatives may often be theoretical when only the existing franchise holder seeks renewal (without competition).

3. Paragraphs 18 and 19 - Range of Service Minimums for the Customer Service Benchmark.

The Commission seeks comments on what allowance should be made in the benchmark for customer service standards established in this proceeding to compensate for differences in cable system sizes and customer bases.

The County believes that the focus in this proceeding should be on uniform quality of service. Escalating or ranges of standards or different benchmarks would allow too much subjectivity in determining cable system compliance, which would result in inconsistent application of the standards and inhibit problem resolution. The only possible exception to uniform standards might be a different benchmark for very small systems of 1,000 subscribers or less that are not a part of multiple system operators (MSO). MSOs will have the corporate resources to meet minimum standards across all of their systems, regardless of size.

4. Paragraph 20 - Definition of Terms Needed for Benchmark Customer Service Standards.

The FCC requests comments on whether the Commission should define in detail the meaning of any terms included in the benchmark standards that may be adopted in this proceeding.

The County recommends that the Commission define all terms and standards in order for them to be uniformly understood and applied. For example, the County suggests that terms such as "standard installation", "service outage", "telephone response time" and "normal operating conditions", among others, must be clearly defined if used in the benchmark in order that

compliance with customer service requirements may be accurately measured.

III. CONCLUSION

The County's comments in this proceeding pertain to those issues in the NPRM that most directly affect cable subscribers. Also, after a review of other Comments in this proceeding, the County finds significant support for its positions, specifically in the filing of NATOA, et al. Based on all this, the County recommends the following:

- The Commission should establish in this proceeding that the Federal customer service standards are self-executing.
- Any waiver of the Federal customer service standards should be on a case-by-case basis in exceptional circumstances after prior review and approval by the franchising authority overseeing the cable company that is making such a request.

- Franchise authorities clearly have the ability to impose local customer service standards unilaterally to correct problems at any time during the franchise period.
- In the case of Federal standards, the Commission can assume an enforcement role that is reactive in nature and need only investigate noncompliance concerns when requested to do so by the local franchising authority.
- The NCTA customer service standards should not be used for a benchmark set of Federal standards because they are not as stringent or as comprehensive as required to meet Congressional intent.
- Local franchising authorities should be given primary responsibility for ensuring cable operators' compliance with customer standards.
- The Commission should require general annual reports from cable operators summarizing compliance with customer service standards.

- The motivation for compliance with customer service standards can best be achieved through penalties for violations of standards. Violations should be punishable at any time during the franchise and not just at franchise renewal.
- Escalating or ranges of standards or different benchmarks should not be established, except perhaps for very small systems, because they could result in inconsistent standards application and difficulties in measuring operator compliance.
- The Commission should define all terms and standards in order for them to be uniformly understood and applied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald B. Mallard", followed by a stylized flourish or initial.

Ronald B. Mallard
Cable Television
Administrator/Director
Fairfax County Department
of Consumer Affairs